

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

Accepted / Filed

APR 16 2019

Federal Communications Commission  
Office of the Secretary

In re )  
 )  
GLR Southern California, LLC )  
 )  
Application for Extension of Special )  
Temporary Authority for Delivery of )  
Programming to )  
Mexican Station XEWW-AM. )  
Rosarita, Baja California Norte, Mexico )  
 )

File No. 325-STA-20180710-00002

DOCKET FILE COPY ORIGINAL

To: Secretary  
Attn.: Chief, International Bureau

**MOTION TO TERMINATE UNLAWFUL OPERATION**

**I. Introduction**

Chinese Sound of Oriental and West Heritage ("CSO"), licensee of KQEV-LP, Walnut, California, by its attorneys, hereby files this Motion to Terminate Unlawful Operation by GLR Southern California LLC ("GLR") and its parent company, H&H Group USA LLC ("H&H") (collectively referred to herein as the "Applicants"). This motion is filed solely to place before the Commission the need for an interlocutory order -- separate and apart from any final order the Commission may grant. That interlocutory order must direct the Applicants to cease the unlawful operation in which they are currently engaged. The STA previously granted to the Applicants did not comply with the Communications Act and is therefore void. Moreover, even if the STA was valid when issued, it has expired, has not been extended, and nothing in the Commission's rules permits a party to continue to operate under an expired STA.

No. of Copies rec'd 0  
List ABCDE

## II. The Commission Must Terminate the Applicants' Unlawful Operation

CSO has asserted repeatedly in this proceeding that the Applicants are operating as if their application has already been granted. They have achieved all that their Application was filed to accomplish, even though that Application has not been granted: (1) H&H has consummated the purchase of GLR and thus taken ownership and control of the Permit without authority from the Commission, (2) GLR and H&H have been operating pursuant to a Special Temporary Authority ("STA") that was unlawfully issued, (3) the STA expired and has not been extended, and there is nothing in the Commission's rules that permits a party to continue operating while a request to extend an STA is pending, and (4) GLR and H&H have been delivering Phoenix Television<sup>1</sup> programming to XEWW-AM for broadcast into the United States since July 25, 2018 – almost nine months – without valid authority.

The Commission's general authority to grant any permit for any broadcast facility is subject to the provisions of Section 309 of the Communications Act, 47 U.S.C. 309. That section details the conditions and factors required to support the grant of an application.<sup>2</sup> Pivotal here, the Commission has also made clear that grant of an STA may not be used to permit *early operations*, unless and until it makes necessary findings regarding the qualifications of an applicant. *In re Mid-Michigan Broadcasting Corp.* 68 FCC 2d 1135 (1972). Early operation was

---

<sup>1</sup> Phoenix Television is used to describe individually and collectively the group of entities controlled by Phoenix Media Investment (Holdings) Limited. H&H and GLR have stated that they have contracted for programming from one of these entities, Phoenix Radio LLC. Response to Unauthorized Filings, filed September 24, 2018, Exhibit A at 1.

<sup>2</sup> Section 309 provides: "Subject to the provisions of this section, the Commission shall determine, in the case of each application filed with it to which section 308 of this title applies, whether the public interest, convenience, and necessity will be served by the granting of such application, and, if the Commission, upon examination of such application and upon consideration of such other matters as the Commission may officially notice, shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application."

precisely the objective of the STA here. The STA could not be granted to H&H, because its qualifications to hold the Permit have never been determined by the Commission. By having GLR request the STA before H&H took control of GLR, H&H attempted to circumvent the restriction on early operations. However, this simply resulted in an unauthorized transfer of control of the Permit once H&H took control of GLR. Once H&H took control of GLR, the STA should have been terminated, because H&H has no authority to control the Permit. As such, the STA is invalid and there is nothing to extend.

As we have shown previously, CSO is injured every day that H&H, GLR and Phoenix are broadcasting over XEWW-AM pursuant to an unlawfully issued STA. CSO has been attempting to bring to the Commission's attention the many reasons why this unlawful operation must not be extended.<sup>3</sup> As CSO is requesting that the Commission to order the cessation of this unlawful operation, this request is similar to a request for a stay of Commission action. Because the Commission continues to allow the Applicants to operate even though the unlawfully issued STA has expired, CSO will repeat here at length the reasons why the unlawful operation must be terminated.

In *Rates for Interstate Inmate Calling Services*, 31 FCC Red. 10936 (WB 2016),<sup>4</sup> the Commission set out the four parts of the test to obtain a stay: (1) Has the petitioner shown that it is likely to prevail on the merits? (2) Has the petitioner shown that without such relief, it will be irreparably injured? (3) Would the issuance of a stay substantially harm other parties interested

---

<sup>3</sup> On January 29, 2019 CSO filed its "Opposition to Special Temporary Authority Extension and on February 19, 2019, CSO filed its "Supplement to Opposition to Special Temporary Authority Extension," setting forth the reasons for denial of the extension of the STA.

<sup>4</sup> The Commission follows the test set forth in *Wash. Metro. Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977).

in the proceedings? (4) Where lies the public interest?<sup>5</sup> Applying the Commission's test to this case demonstrates clearly that the Commission should deny the Request to Extend the STA and terminate the unlawful operation immediately.

First, the likelihood of CSO demonstrating that the underlying Permit Application should not be granted is very high. Over the course of this proceeding CSO has demonstrated that:

1. There has been an unauthorized transfer of control of the Permit. This demonstrates that H&H and GLR have violated the Communications Act and thus cannot be trusted to comply with the Act going forward.<sup>6</sup>
2. The STA was unlawfully granted, because it failed to provide the public thirty-days' notice of the STA application, and failed to limit the STA to provide programming that is "only special events not of a continuing nature." As the original STA was unlawfully granted, it cannot be lawfully extended.<sup>7</sup>
3. The original STA, even if lawfully granted, has expired and has not been extended. There is nothing in the Commission's Rules that permits an applicant to continue to operate while a request to extend an STA is pending. Therefore, the Applicants must stop their unlawful operation.
4. It is apparent from the available evidence that H&H is a front for Phoenix Television, which is controlled by the People's Republic of China ("PRC"), and the programming that is being broadcast is presented as a form of propaganda for the PRC.<sup>8</sup>
5. Numerous federal agencies and other authorities have described the type of programming in which Phoenix Television is engaged as a threat to national security.<sup>9</sup>
6. Phoenix Television has been shown previously to attempt to manipulate the ownership and operation of U.S. broadcast facilities for the purpose of providing propaganda for the PRC.<sup>10</sup>

---

<sup>5</sup> 31 FCC Red 10936, par. 9.

<sup>6</sup> Supplement to Opposition to Special Temporary Authority Extension at 6.

<sup>7</sup> Opposition to Special Temporary Authority Extension at 4-7; Supplement to Opposition to Special Temporary Authority Extension at 2-5.

<sup>8</sup> Supplement to Petition to Deny, filed September 4, 2018, at 11-21; Reply to Opposition to Petition to Deny, filed September 11, 2018 at 6-12; Reply to Response to Unauthorized Filings, filed October 17, 2018, at 9-20.

<sup>9</sup> Petition to Deny, filed August 8, 2018, at 4-8; Supplement to Petition to Deny, filed September 4, 2018, at 3-11; Reply to Response to Unauthorized Filings at 4-9.

<sup>10</sup> Supplement to Petition to Deny at 15-16; Reply to Response to Unauthorized Filings at 10-11.

7. A former News Director for Phoenix Television has provided CSO with a declaration describing the propaganda activities of the PRC directed through Phoenix Television.<sup>11</sup>
8. The Foreign Agents Registration Act requires H&H, GLR and Phoenix Television to register as foreign agents.<sup>12</sup>
9. H&H, GLR and Phoenix Television are required to seek approval of the Committee on Foreign Investment in the United States.<sup>13</sup>
10. XEWW-AM causes interference to two U.S. radio station authorizations.<sup>14</sup>

Given this list of unlawful and/or improper actions, CSO has demonstrated that the STA was not lawfully granted and, in any event, has expired, the Permit should not be granted, and CSO would have a high degree of probability of succeeding on the merits of having the Permit Application denied by the Commission. If the Commission were to grant the Permit Application despite all of this evidence, it would be reversible error.

Second, CSO is suffering irreparable injury every day that H&H, GLR and Phoenix Television continue their unlawful broadcasts. CSO, as a noncommercial, low power FM station, competes with XEWW-AM for listeners. For CSO to survive, it must encourage listeners and other potential donors to make donations to the station. With its vastly more powerful signal, XEWW-AM has the potential to draw listeners and potential donors away from listening to CSO's station. CSO has no remedy at law or in equity to be compensated for damages sustained as a result of the unlawfully granted STA and continued unlawful operations.

Third, the Commission must ask whether termination of the STA would substantially harm other parties interested in the proceedings. The other interested parties are H&H, GLR and Phoenix Television. As has been demonstrated above, these parties are benefiting from

---

<sup>11</sup> Reply to Opposition to Petition to Deny at 10-12 and Exhibit 1.

<sup>12</sup> Supplement to Petition to Deny at 17-18.

<sup>13</sup> Supplement to Petition to Deny at 18-19.

<sup>14</sup> Supplement to Petition to Deny at 22-24 and Exhibits 1-3.

consummating a transfer of control before the Commission authorized that transfer and from utilizing an unlawfully granted STA. These parties have no reasonable expectation that they should be allowed to continue their unlawful operation. Thus, the potential harm to those parties, which would be the termination of the STA, is an appropriate result for the unlawful operation.

Fourth, the Commission must ask, where lies the public interest? The above discussion clearly demonstrates that H&H, GLR and Phoenix Television are engaged in an unlawful operation, which unfortunately has been facilitated by the Commission's improvident granting of the STA and its failure to declare it now void. The public interest can never be served by the Commission allowing an unlawful operation to continue. The public interest is served by proper execution of the Commission's statutory authority. That requires an immediate order denying the Request to Extend the STA and ordering the Applicants to cease operations.

## **II. Conclusion**

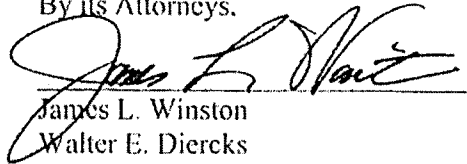
As a Chinese-American entity, CSO's primary goal is ensure the best possible service to the Chinese-American community. In this case, we have an unauthorized transfer of control of the Permit. This alone demonstrates that H&H should not be granted the Permit and should not be allowed to continue the STA. The Commission is statutorily precluded from granting an STA without a thirty-day public notice of the request unless the STA is for "special events not of a continuing nature." Thus, there is no statutory basis upon which the STA could have been granted, and it cannot be extended or renewed. The Applicants are continuing to operate as if they have a valid STA, however the original STA, even if lawfully granted, has expired and nothing in the Commission's Rules permits the Applicants to keep operating simply because they have a request pending to extend the STA. Pivotaly, a grant extending a void STA would be

ultra vires and void. The Commission must immediately direct the Applicants to cease their unlawful operation.

Respectfully submitted,

**CHINESE SOUND OF ORIENTAL AND  
WEST HERITAGE**

By its Attorneys.

A handwritten signature in black ink, appearing to read "James L. Winston", is written over a horizontal line.

James L. Winston

Walter E. Diercks

RUBIN, WINSTON, DIERCKS, HARRIS  
& COOKE, LLP

1201 Connecticut Avenue, N.W. Suite 200

Washington, D.C. 20036

(202) 861-0870

[jwinston@rwdhc.com](mailto:jwinston@rwdhc.com)

April 16, 2019

CERTIFICATE OF SERVICE

I, Sheree Kellogg, do hereby certify that I sent via U.S. mail (except where indicated), on this 16th day of April, 2019, copies of the foregoing MOTION TO TERMINATE UNLAWFUL OPERATION to the following:

David Oxenford  
Wilkinson, Barker, Knauer, LLP  
1800 M Street, NW  
Suite 800N  
Washington, DC 20036

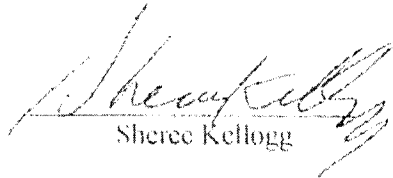
Reid Avett  
Duane Morris, LLP  
505 9<sup>th</sup> Street, NW, Suite 1000  
Washington, DC 20004-2166

Paige K. Fronbarger  
Wilkinson, Barker, Knauer, LLP  
1800 M Street, NW, Suite 800N  
Washington, DC 20036

Brandon Moss\*  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554  
Brandon.Moss@fcc.gov

Janice Shields\*  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554  
Janice.Shields@fcc.gov

\*sent via email only

  
Sheree Kellogg